

BEFORE THE HONORABLE SUPREME COURT OF REPUBLIC OF LIBERIA  
SITTING IN ITS OCTOBER TERM, A.D. 2017

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE  
 BEFORE HIS HONOR: KABINEH M. JA'NEH.....ASSOCIATE JUSTICE  
 BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE  
 BEFORE HIS HONOR: PHILIP A.Z. BANKS, III .....ASSOCIATE JUSTICE  
 BEFORE HER HONOR: SIE-A-NYENE G. YUOH .....ASSOCIATE JUSTICE

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Susannah L. Mator, Representative Candidate, )  
 UPP, District #4, Bong County, Republic of Liberia )  
 .....Appellant )

Versus )

Robert Flomo Womba, Representative Candidate, UP )  
 District #4, Bong County.....1<sup>st</sup> Appellee )

And )

The National Elections Commission, represented by )  
 its Chairman, Hon. Jerome Korkoya )  
 of the City of Monrovia, Liberia.....2<sup>nd</sup> Appellee )

APPEAL

GROWING OUT OF THE APPEAL: )

Susannah L. Mator, Representative Candidate, )  
 UPP, District #4, Bong County, Republic of Liberia )  
 .....Complainant/Appellant )

Versus )

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The National Elections Commission, )  
 represented by its Chairman, Hon. Jerome Korkoya )  
 of the City of Monrovia, Liberia.....2<sup>nd</sup> Appellee )

Appellant's Appeal before the Board of  
 Commissioners of the National Elections  
 Commission (NEC)

GROWING OUT OF THE CASE: )

Susannah L. Mator, Representative Candidate, )  
 UPP, District #4, Bong County, Republic of Liberia )  
 .....Complainant )

Versus )

Robert Flomo Womba, Representative Candidate, UP )  
 District #4, Bong County.....1<sup>st</sup> Defendant )

And )

The National Elections Commission, represented by )  
 It's Chairman, Hon. Jerome Korkoya )  
 of the City of Monrovia, Liberia.....2<sup>nd</sup> Defendant )

Electoral Mal-Practice/Fraud

Heard: January 16, 2018

Decided: February 9, 2018

MR. CHIEF JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

On October 10, 2017, the National Elections Commission (NEC), pursuant to its constitutional and statutory mandate, conducted Presidential and Representatives Elections throughout the country. Amongst the constituencies involved in the elections for members of the House of Representatives was Electoral District #4, Bong County. The records reveal that in that Electoral District, fourteen (14) candidates contested for the single

Representative position, including the appellant, Susannah L. Mator, who was fielded on the ticket of the United People's Party (UPP) and who was announced by the NEC as having come third from amongst the fourteen (14) candidates. The NEC also announced that Co-appellee Robert Flomo Womba, who ran on the ticket of the Unity Party (UP), had the highest number of valid votes cast and as such he was declared the winner.

On October 11, 2017, one day following the announcement of the result of the election in District #4, Bong County, the appellant, not being satisfied with the result, filed a complaint with the Magistrate of Elections alleging that the elections were marred by irregularities and fraud. We quote the letter of complaint filed by the appellant with the Magistrate of Elections as follows, to wit:

"United People Party (UPP)  
Gbarnga City,  
Bong County  
Republic of Liberia  
October 11, 2017

Mr. Daniel Newland  
Upper Bong Magistrate  
Republic of Liberia

Dear Mr. Newland,

Having observed the entire process in Bong County, mainly in District #4, the process was heavily [marred] by fraud by the Unity Party candidate.

During yesterday voting in District #4, Bellemu precinct, Bektenai precinct, Nysue precinct, Shiankpalai and Kalawayaquelleh were not free and fair.

One of the observers from The Unity Party by the name of Yamah Kollie, representing precinct code #06008 and using the position of supervisor, was in control of NEC voters roll book containing all of the voters' names and photos. In addition to that, she was in possession of majority of the voters' ID cards. As the voting started, she encouraged voters to vote. When we observed this attitude by the Unity Party observer (Yamah Kollie), one of our observers by the name of McGill T. K. Lablah reported it to a police officer by the name James K. Tarnue. After that, the police and others immediately informed the Assistant Magistrate.

Surprisingly, depending on the NEC as a fair body, according to our observer (McGill T. K. Lablah), the Assistant Magistrate ordered the police to give back to this same Yamah Kollie the voters' book. In Kalawayaquelleh, we also observed that Unity Party candidate by the name Robert Flomo Womba was found giving ten thousand Liberian Dollars (\$10,000LD) to NEC workers yesterday to have more votes in his favor.

We also observed that the Unity Party observers were in control of the NEC voters roll book which contain names and photos of all the voters in District #4 on the voting date, in which our party (UPP) observers were not served by NEC in Bong County.

Meanwhile Mr. Newland, we the officials and members, including our ever potent candidate, Susana Lorpu Mator, will not accept Unity Party's candidate's (Robert Flomo Womba) result in District #4.

We are also asking you to please stop the tallying and carry on investigation immediately. Attached is a proof of Yamah Kollie Identification Card as a Unity Party supervisor.

Thanks  
Sincerely yours,

Signed: Aaron J. Larteh  
County Chairman (UPP)

Approved: Susana Lorpu Martor  
UPP Candidate District #4

Cc: Mr. T. Q. Harris  
National Chairman  
United People's Party

J. Dallamah Sulonteh  
Counselor at Law  
File"

The letter of complaint quoted above was followed one day later, on October 12, 2017, by another letter of complaint by the appellant, also addressed to Mr. Daniel Newland, the Magistrate of Elections for Upper Bong County, alleging further electoral irregularities. We also quote this latter letter as follows:

"October 12, 2017  
Mr. Daniel Newland  
Upper Bong Magistrate  
Republic of Liberia

Dear Mr. Newland:

Having previously told you that the election was not credible in [a] lot of precincts in District #4, such as Shankpaiai, Konota, Nyasue and Palelei yesterday, we also observed that one of the election ballot boxes was left behind intentionally in Nyasue without being sealed while the rest of the four (4) were brought in front by the NEC workers. When contacted the NEC workers regarding the issue they said that the box was forgotten about by them. The box was arrested by the seated representative in District #4 which was turned to the magistrate at the hour between 4:00 pm to 5:00pm.

On another occasion, most of our observers were not served by the NEC with the Record of Count at the end of the poll. During the tallying process at the Upper Bong Magistrate Office in Gbarnga, most of the figures written by the NEC workers on voting day were being considered for correction. This means that the tallying process is not also being transparent as the NEC Upper Bong Magistrate continues to change nearly all of the total votes figures which they considered as being mistakes.

With all of the above, we are therefore asking your office to put stop to the tallying process in the entire District #4 as we continue to consider the process not creditable.

Therefore, we are asking you to have re-election in the entire District #4 or these specific areas mentioned in District #4.

Thanks

Truly yours,  
Signed:

County Chairman UPP

Approved: Susana Lorpu Martor  
District #4 Candidate/UPP  
Bong County

CC: Hon. Jerome Korkoyah  
National Chairman  
National Election Commission (NEC)  
CC: Ron. Thomas Q. Harris  
National Chairman, United People's Party (UPP)"

We should note that the allegations made in the two letters of complaint quoted above were serious and deserving of immediate attention by the Magistrate of Elections and the records certified to this Court show that urgent attention was indeed given to the complaints. Hearings into the complaints commenced on October 13, 2017; at the call of the case the counsel for Co-appellee Robert Flomo Womba requested the Hearing Officer to allow him to make a submission, which turned out to be a motion to dismiss the complaint. The motion to dismiss averred that the allegations of bribery levied in the complaints part-took of a criminal matters which the Hearing Officer had no jurisdiction over; that other allegations made in the complaints were hearsay and therefore not admissible in court; and that the Hearing Officer before whom the complaints were filed had concurrent jurisdiction with the Magistrate of Elections, therefore he could not entertain the allegations made against the Magistrate of Elections.

It is worth mentioning that the records further reveal that on the same date the appellant filed the first complaint with the Magistrate of Elections, another complaint was filed by

Lester Paye, who was also a contestant for the Representative seat in District #4. Because the several complaints related basically to the same allegations of irregularities, fraud and bribery alleged to have been committed in the course of the conduct of the elections in the District, the Hearing Officer decided to consolidate the complaints. At the close of the hearing, the Hearing Officer reserved ruling and gave notice to the parties that the ruling would be rendered on October 14, 2017.

It appears that as per the notice given to the parties, the ruling was handed down on October 14, 2017. In his ruling, the Hearing Officer sustained all of the points raised in the motion to dismiss filed by the counsel for Co-appellee Robert Flomo Womba and dismissed the complaints. The appellant noted exception to the Hearing Officer's ruling and on October 20, 2017, submitted his bill of exceptions to the Hearing Officer for approval. The bill of exceptions was approved by the Hearing Officer and on the same day, that is, October 20, 2017, it was filed with the Board of Commissioners of the NEC. The Board of Commissioners of the NEC, after due consideration of the appellant's appeal, reversed the ruling of the Hearing Officer and remanded the case, with an order for a recount to be conducted at the various precincts which the appellant had complained of; the recount was to be carried out by a special team set up by the NEC to undertake the task.

The Magistrate of Elections, upon receipt of the mandate from the Board of Commissioners of the NEC, resumed jurisdiction over the case and proceeded to schedule a date for the commencement of the recount. However, the appellant, noting that the notice served for the recount did not have some of the precincts which he believed should have been included in the recount, and believing that the recount was tainted with fraud and lack of transparency, decided to withdraw from the recount process until his grievances expressed in the letters of complaint were addressed. In this connection, Mr. Aaron J. Larteh, County Chairman of UPP, on behalf of the appellant, wrote a letter to the Magistrate of Elections dated November 21, 2017, which we quote below:

“United People's Party (UPP)  
Bong County Branch  
Ganta Highway, Gbarnga City,  
Bong County, Republic of Liberia

November 21, 2017

NEC Recount team  
Upper Bong Magistrate Office  
Gbarnga City, Bong County

Dear Hon. Presiding:

We received a communication dated November 17, 2017 from Mr. Daniel Newland (Upper Bong NEC Magistrate) asking us as a Party (UPP) representing our candidate Susannah Lorpu Martor to appear for a recount on the 21 of November 2017.

In this communication, Mr. Newland failed to mention the total polling places according to the bill of exceptions filed by us on October 18, 2017. He also failed to mention three precincts in our October 11<sup>th</sup>&12<sup>th</sup> 2017, complaints or communications filed at his own office.

In addition to that, Mr. Newland's citation recorded six precincts and nine polling places for the recount which we think [are] not in a good way for transparency.

Before the recount process could start, we noticed that [on] one of the ballot boxes two seals were missing while three were available on it. On the other hand, another one ballot box was also seen with two covers and a tap wrapped around it, which we strongly believe that there was fraud committed.

During the recounting process we observed that the figures written by NEC's workers on voting day (October 10, 2017) for the unused, spoiled and discarded ballot papers was different, as the Upper Bong Magistrate continued to say it was error committed by the Upper Bong NEC field workers.

Secondly, the number of ballot papers that should be in the ballot box which were written on Election Day as recorded on the record of counts appears to be different during the recounting process.

Thirdly, the number of ballot papers taken from the ballot box that were written on the same Election Day according to the record of counts appears different during the recounting process.

On another occasion, the presiding officers for the recount process refused to give account of the spoiled, unused and discarded ballot papers that were in the TEE#1, as requested by us (UPP).

The FRR and the unused ballot box seals that were in the TEE#2 were not available for transparency. The presiding officer work sheet original, the presiding office Journal, the RC-1 original and RCO2 original in the TEE#3 were not available.

The third ballot box was opened for recount which did not also have the Record of counts.

Therefore, in view of the foregoing, we the aggrieved party (UPP) [have] resolved to discontinue the recount process until our demands are met.

Thanks

Signed:  
Mr. Aaron J. Larteh  
County Chairman/UPP  
Approve

Atty. Julius T. Bumbah Sr.  
Legal Counsel/UPP  
CC:  
Cllr. Jerome G. Korkoya  
Chairman  
National Election Commission”

On the same day on which the appellant communicated with the Magistrate of Elections informing him of her withdrawal from the recount process, another candidate who had similarly filed a complaint against the October 10, 2017 Elections conducted in the District, in person of Lester M. Paye, also wrote a letter to the Magistrate of Elections informing him of his withdrawal from the recount. We shall not quote Mr. Paye’s letter as it is a separate case from the appellant’s case. What is important for this Opinion is that the two aggrieved candidates decided to withdraw from the recount because they did not believe that it was being properly conducted. The withdrawal of the candidates, however, did not stop the recount from being conducted and the results thereof announced. The recount process commenced on November 21, 2017, and ended on November 22, 2017. The results of the recount were said to have shown that the appellant was still in third place in the legislative race and that Co-appellee Robert Flomo Womba, who had originally been declared the winner, retained his first place position in the race.

On November 23, 2017, one day after the recount was concluded, the appellant determined that in the wake of the allegations regarding the recount, a bill of information should be filed with the Board of Commissioners of the NEC so that the Board could look into the allegations made regarding the recount which the appellant alleged was conducted in violation of the mandate of the Board. We quote the bill of information in its entirety as follows:

“BILL OF INFORMATION

AND NOW COMES INFORMANT IN THE ABOVE ENTITLED CAUSE OF ACTION, to bring this information to Your Honours attention in the following manner and form as showeth to wit:

1. That informant says and avers that she is dissatisfied with the manner and form in which the recount was done on November 21, 2017 in District #4 Upper Bong County, as per your order.
2. That during the recount, we noticed that some of the ballot boxes particularly Shankpala Polling Place (code#06102) # 1,2, and 3, Foequelleh polling place (code# 06018)# 1 and Nyansue polling place (code 06088) #3 seals were missing on the ballot boxes.

3. That the following polling places were left out of the recount and in the interest of transparent justice and fair play; the following polling places that were omitted during the recount are:

- I. Belefenia Precinct code # 06004, Polling Place #1
- II. Bellemue Precinct code # 06008, Polling Place #5
- III. Foequelleh Precinct code # 06018, Polling places # 5 and 3

4. That the original record of counts that should have been in [the] ballot box of Shankpala Polling Place #3 was not found but rather brought from the Magistrate's Office.

5. That One of the ballot boxes particularly Shankpala polling place #2 was seen with two seals and at the top a tape was seen wrapped around it, which we strongly believe that there was fraud committed.

6. The presiding officers for the recount process refused to give account of the "spoiled, unused and discarded ballot papers that were in the TEE #1 as requested by us (UPP) for counting.

7. That the FRR and the unused ballot box seals in the TEE #2 were not available for checking.

8. That the presiding officer worksheet, original presiding officer journal and the gender tracking form were not made available during the recounting process for transparency.

9. That during [the] process of the recount, we observed that the figure written by NEC workers on voting day, October 10, 2017, for the unused, spoiled and discarded ballot papers was different...

WHEREFORE AND IN VIEW OF THE FOREGOING FACTS AND CIRCUMSTANCES, Informant prays Your Honors, the Board of Commissioners, that there be a rerun in the interest and spirit of fair play and render unto Informant any and all further relief that Your Honors and the Honourable Commissioners may deem Just and legal in these premises. This informant so prays."

Upon a hearing duly had by the Board of Commissioners of the NEC on the bill of information, the Board, on January 3, 2018, handed down its ruling wherein it refused to pass on the issues raised in the bill of information on the ground that it lacked jurisdiction to look into the merits of the bill of information since in the original appeal taken by the appellant to the Board of Commissioners, the bill of exceptions, the instrument that would have conferred jurisdiction on the Board to look into the case was filed outside of the allowed statutory time, thus depriving the Board of the requisite jurisdiction. We quote the ruling of the Board of Commissioners of the NEC:

## "FINAL RULING OF THE BOARD OF COMMISSIONERS

Presently before the Board is a bill of information filed by Informant, Susannah Lorpu Mator. To aid in addressing the issues presented, we will take administrative notice of our records.

On October 10, 2017, the National Elections Commission (NEC) conducted elections for the 73 seats in the House of Representatives. Not satisfied with the conduct and result of the representative election in district #4, Bong County, Informant Mator -- a representative candidate on the ticket of the United People's Party (UPP) in the said election -- filed a complaint with the office of the Elections Magistrate for upper Bong County, alleging electoral fraud. The records further show that on October 11, 2017, Mr. Lester M. Paye, another representative candidate in the said district # 4 election, filed a separate complaint with the office of the Elections Magistrate, alleging irregularities and fraud.

The cases were consolidated and hearing commenced on October 13, 2017. On October 14, 2017, the Hearing Officer issued final ruling dismissing the complaints. Not satisfied with the said ruling of the Hearing Officer, Informant Mator and Mr. Paye each filed separate bill of exceptions with the Board of Commissioners on October 20, 2017.

Acting on Informant Mator's October 20, 2017 bill of exceptions, this Board heard her appeal of the Hearing Officer's October 14, 2017 ruling and, on November 6, 2017, issued a decision ordering a recount of the votes from 9 polling places in electoral district #4, Bong County.

The recount process commenced on November 21, 2017. Representatives of Informant Mator and representatives of Respondent Womba were present. International and local observers were also present. The results from the nine polling places did not change the overall outcome of the October 10, 2017 representative election in the said district. Not satisfied with the result of the recount, however, Informant Mator on November 23, 2017 filed the instant bill of information with the Board. We must determine whether information would lie.

During the hearing of Mr. Lester Paye's appeal by this Board, the question as to whether we had jurisdiction to hear his appeal was raised. Upon consideration, the Board found that it lacked jurisdiction because Mr. Paye, who filed his bill of exceptions with the Board on October 20, 2017, filed same beyond 48 hours required period.

The question as to whether a party complied with the statute/ regulations for appealing a decision of a hearing officer or elections magistrate is jurisdictional because, in the absence of compliance with the statute/regulations, this Board lacks jurisdiction to hear the appeal on the merits.

As stated earlier, the records show that the Hearing Officer on October 14, 2017, issued a consolidated ruling concerning the election complaint filed by Informant Mator as well as the election complaint filed by Mr. Paye. The record further shows that Informant Mator, unsatisfied with the said final ruling of the Hearing Officer, filed her bill of exception with the Board of Commissioners on October 20, 2017.

Taking recourse to Section 5.12, subsection 4 of the New Elections Law, we observe that it provides that a decision by an Elections Magistrate may be appealed to the Board within forty eight (48) hours after the posting of the decision by the Magistrate. Section 5.12, subsection 5 of the New Elections Law, states that a decision by a hearing officer may be appealed to the Board within forty eight (48) hours after the posting of the decision by the hearing officer.

Additionally, Article 12.1 of NEC's Hearing Procedure mandates that a party not satisfied with a decision of the Magistrate/Hearing Officer shall have the right to appeal to the Board of Commissioners no later than 48 hours after the decision is rendered, and that a Bill of Exceptions approved by the Magistrate/Hearing Officer shall be filed with the Board of Commissioners before the end of the said 48 hours period.

Counting 48 hours from the Hearing Officer's October 14, 2017 final ruling in this case, Informant Mator had up to Tuesday, October 17, 2017 to file her bill of exceptions with the Board. However, the record shows that she filed her bill of exception with the Board on October 20, 2017. This untimely late filing by Informant Mator was overlooked by the Board during our hearing of her appeal and in our ruling in the said appeal, which ordered a recount of the votes from 9 polling places in electoral district #4, Bong County. With Informant Mator having filed her bill of exceptions with the Board beyond the required 48 hours period, this Board did not have jurisdiction to hear and decide her appeal on the merit and, as such, should have dismissed her appeal for lack of jurisdiction.

Again, the question as to whether a party complied with the statute/regulations for appealing a decision of a hearing officer or elections magistrate is jurisdictional because, in the absence of compliance with the statute/regulations, this Board lacks jurisdiction to hear the appeal on the merits.

This Board notes that the Honorable Supreme Court has held that subject matter jurisdiction can be raised at any point, even before the Honorable Supreme Court; and that a tribunal has a duty to sua sponte consider the issue of subject matter jurisdiction even when not raised by any of the parties. For reliance, see: *Nyonbeor Al-Boley and Daniel Sluwar vs. Unity Party*, 33LLR 309 SLY.3; *In re Complaint of Sochor v McFarland* (August 10, 2007); *Scaf et al v Ricketts*, 28 LLR 263 (December 20, 1979); *Lone Star Insurance Co. v Copper et al*, 40 LLR 549 (July 6, 2001).

This Board notes further that the Supreme Court has also held that a judgment rendered without jurisdiction is a legal nullity, absolutely void. See for reliance: *Maurice v. Diggs*, LRSC, 2; 2LLR3;4(1908); *Philip v. Nelson and Freeman*(1949)\_72, 19LLR134; *The Intestate of the late Chief Murphey Vey* 10 John et al v. *The Intestate Estate of the Late Bendu Kaidi et al* 41 LLR277; 2002; *Scanship (Lib) Inc. v Flomo* [2002] LRSC 21; 41 LLR 181 (December 13, 2002)

In the instant case, we note that the results of the recount from the nine polling places did not change the overall outcome the October 10, 2017 representative election in the said district #4, Bong County election. The result still has Informant Mator as having finished third. Notwithstanding the foregoing fact, this Board, as per settled law, did not have jurisdiction to hear and decide Informant Mator's appeal on the merit. Accordingly, invoking the authority to correct itself, this Board hereby holds that the November 6, 2017 recount order by this Board in the said appeal of

Informant Mator, out of which the instant bill of information grew, ought to be set aside as a legal nullity. Hence, the instant bill of information is hereby denied.

WHEREFORE AND IN VIEW OF THE FOREGOING, this Board holds that it did not have jurisdiction to hear and decide Informant Mator's appeal on the merit, and the recount order entered by this Board in the said appeal is hereby reversed/recalled as a legal nullity. The instant bill of information, which grew out of the recount decision entered in the said appeal, is hereby denied. AND IT IS HEREBY SO ORDERED.

GIVEN UNDER OUR HANDS AND SEAL OF THE NATIONAL ELECTIONS COMMISSION THIS 3<sup>rd</sup> DAY OF JANUARY, A.D. 2018."

As seen from the ruling of the Board of Commissioners of the NEC, the main thrust or position of the Board is that it lacked jurisdiction in the first place, to have entertained the appeal which the appellant had originally taken from the ruling of the Hearing Officer dismissing the complaint. In other words, the appeal of the appellant should not have been heard and a decision made for a recount to be conducted. This, according to the Board, was because the appellant had filed her bill of exceptions with the Board beyond the allowable statutory time and that this late filing of the bill of exceptions deprived the Board of jurisdiction to hear the appeal. By parity of reasoning, the Board took the view that since the appeal should not have been heard, the bill of information which presents issues relating to the conduct of the recount ordered by the Board, growing out of the appeal, is also nullity. Consequently the Board refused to entertain the allegations made in the bill of information.

The single question we must address in determining this case is whether the Board erred in refusing to entertain the bill of information on its merits on the ground that it lacked jurisdiction to entertain the appeal in the first instance because the appellant filed her bill of exceptions outside of the statutory time allowed for the filing of such bill of exceptions. We hold, in response to this issue, that the Board of Commissioners of the NEC was in error in its conclusion that the appellant filed her bill of exceptions outside of the statutory time.

We do not dispute the contention of the Board that this Court has decided in a long line of cases that a court or judicial tribunal must first decide if it has jurisdiction over a matter before it proceeds to make a determination of the matter on the merits. *Mulbah v. Russell* [2014] LRSC 57 (2014); *Emmanuel v. Hilton et'al* [1984] LRSC 37; 32 LLR 277 (1984); *Lamin et'al v. Save the Children Fund (UK)* [2000] LRSC 10, 40 LLR 96 (2000); *Robert v. Kaba* [2004] LRSC 20; 42 LLR 228 (2004); *M/M Liberia Corp. v. Toweh* [1983] LRSC 19; 30 LLR 611 (1983). For where the judicial tribunal lacks such jurisdiction, its ruling,

judgment or determination is illegal, void, unenforceable, and lacking all iota of legal efficacy. The Intestate estate of the late Chief Murphy-Vey John et'al v. the Intestate estate of the late Bendu Kaidii, 41 LLR 277 [2002]. We are of the view, however, that in the instant case, the Board did have jurisdiction over the appeal and therefore correspondingly over the bill of information. Let us examined the facts upon which the Board predicated its decision and reached the conclusion that it lacked jurisdiction.

Our examination of the records reveal that the Hearing Officer, upon receipt of the complaints of the appellant against the elections conducted in District #4, Bong County, setting forth several grounds for challenging the process and the results announced therefrom, all of which complaints were filed within statutory time, immediately scheduled a hearing for October 13, 2017. The parties were all present for the hearing on the date set. At the Hearing, the counsel for Co-appellee Robert Flomo Womba made a submission, praying the Hearing Officer to dismiss the complaint on grounds that (a) the allegation of bribery was a criminal matter and hence the Hearing Officer lacked jurisdiction over the matter; (b) that much of the allegations were hearsay and not admissible; and (c) that as the Hearing Officer held concurrent jurisdiction with the Magistrate of Elections against whom the complaints were lodged, the Hearing Officer could not, under the law, entertain the case against the Magistrate of Elections. The Hearing Officer agreed with the contentions and entered a ruling dismissing the appellant's complaints. It was from this ruling that an appeal was taken by the appellant to the Board of Commissioners of the NEC.

We see from the records that the appellant filed her bill of exceptions with the Board of Commissioners on October 20, 2017, a period of six (6) days after the ruling made by the Hearing Officer. The counsel for the appellee has argued that the ruling was actually made on October 13, 2017, but he received copy of the said ruling on the following day, October 14, 2017. On the other hand, the counsel for the appellant denied receiving the ruling on the day it was entered or immediately thereafter and does not say when he actually received the ruling. The records do not show that the Ruling made by the Hearing Officer was delivered to the appellant on the day it was made or immediately thereafter. We do not delve into whether the Hearing Officer actually made the ruling on October 13, or 14, 2017. The question for us is when did the appellant receive the ruling?

We find in the records a document evidencing that the appellant did not receive the ruling on October 14, 2017, even assuming that the ruling was made on or prior to that date. Indeed, what the records reveal is that a second citation was issued on October 18, 2017,

for a hearing on October 19, 2017, addressed to the appellant. Here is how the citation reads:

Republic of Liberia (2<sup>nd</sup> Service 18/10/17)  
**NATIONAL ELECTIONS COMMISSION**  
**(NEC)**

Office of The  
 Electons Magistrate

TUBMAN BOULEVARD, SINKOR- P.O.BOX 2044  
 MONROVIA, LIBERIA

FAX +23177226245

**CITATION**

(Notice of Hearing)

By Directive of the Elections Magistrate of UPPER BONG County

You are hereby notified to appear before the Elections Magistrate on the date and at the time and place specified below for a hearing regarding the attached Complaint

Date of Hearing:	Time of <b>Hearing</b> :	Location of Hearing
19/10/17	12:00 Noon	<i>NEC Gbarnga Office</i>
Case # 001-UB-003	Case Name: Susana L. Mator	
	Versus. NEC, Yamah Kollie & Robert F. Womba	

A careful inspection of the above citation indicates firstly that the instrument was issued on October 18, 2017 (shown at the top right hand corner, just after the words Republic of Liberia). The date stated for the hearing is 19/10/17 (October 19, 2017) and the hour is slated for 12:00 noon. It is clear, therefore, that it was not possible for the appellant to have received the ruling of the Hearing Officer on October 14, 2017, as would have put her beyond the statutory time for filing of her bill of exceptions. And the fact that the document states on its face "2nd service" seems to us to be a clear indication that there was a first attempt at service (which could have been for October 14, 2017) but that the attempt was not successful; hence, the attempt by the Hearing Officer to effect a second service on the appellant. Further, the document shows that this second attempt at service was for the hearing in the case to be held on October 19, 2017. This means that the decision in the matter could have only been made on October 19, 2017 (the same day of the second hearing) or on October 20, 2017 (the day on which the appellant filed her bill of exceptions with the Board of Commissioners of the NEC). In such circumstances, given that the instrument was issued by the Hearing Officer of the NEC, the appellant is entitled to the benefit of any doubt created.

Notwithstanding the foregoing clear and cogent fact, the Board of Commissioners of the NEC elected and chose to proceed on the theory that because the ruling of the Hearing Officer was given on October 14, 2017, the appellant must be deemed to have received the

said ruling on that date, whereas the records showed that the ruling could not have been given to the appellant prior to October 19, 2017, because had the ruling been given on October 14, 2017, there would have been no need for a citation for a hearing of the case on October 19, 2017. We therefore hold that the Board was in error firstly, as a matter of law and contrary to the facts which it chose to ignore.

Secondly, it seems rather strange that when the appeal first went to the Board of Commissioners of the NEC, it assumed jurisdiction over the matter and made a ruling remanding the case with a directive that a recount be conducted at certain centers as prayed for by the appellant. We do not see in the records that any contention was raised by either of the parties or the Board itself that the Board lacked jurisdiction to make the decision that it made at that time. To the contrary, the records show that all of the parties to the proceedings accepted the Board's decision and prepared themselves for the recount. The matter was only taken back to the Board via a bill of information when the appellant felt that the directive of the Board for a recount to be conducted was not properly carried out. Under the circumstance, where no issue was raised at the first instance that the appellant did not file her appeal on time, and considering that the Board entertained the matter and took a definitive position, i.e. the ordering of recount, the issue of lack of jurisdiction for untimely filing of the bill of exceptions cannot be belatedly raised for the purpose of refusing to entertain the appeal as well as the bill of exceptions.

This Court has held that it is only jurisdiction over the subject matter which can be raised at any time before final decision, even before the Supreme Court for the first time. *Scanship (Lib) Inc. v. Flomo* [2002] LRSC 21; 41 LLR 181 (2002). The issue at hand does not involve jurisdiction over subject matter. Certainly, the Board of Commissioners of the NEC has subject matter jurisdiction over an electoral matter such as the instant case.

This Court has also held that when a party to a judicial proceeding admits by some act, the jurisdiction of a court, he may not, thereafter, deny the Court's jurisdiction especially when a change would be to the prejudice of another party who has acquiesced to the position formerly taken. *Lloyd's Insurance Company of London v. The African Trading Company* 24LLR 70 (1975). Although not a judicial tribunal, the above quoted principle of law is applicable to the Board of Commissioners of the NEC, the Board being a quasi-judicial forum where proceedings are adjudicated. We therefore hold that the Board of Commissioners of the NEC, having assumed jurisdiction over the appellant's appeal, heard and ordered a recount, the Board ought to hear the bill of information filed before it by the

Before concluding this opinion, we deem it necessary to distinguish this case from the case, *Lester M. Paye v. Robert Flomo Womba and the National Elections Commissions*, (decided March Term, January 19, 2018). In the *Paye* case, unlike the instant case, we granted the motion to dismiss the appeal on two principle grounds. Firstly, while it is true that Lester Paye and the appellant filed their respective bill of exceptions with the Board of Commissioners of the NEC on October 20, 2017, there is no showing that Lester Paye, like appellant Mator, was ever issued a citation on October 18, 2017, for a hearing on October 19, 2017. As we have said, the notice given to appellant Mator is a clear indication that she could not have received the Hearing Officer's ruling prior to October 19, 2017. This was not the case with Lester Paye, who, evidence showed, received the Hearing Officer's ruling on October 14, 2017, and filled his bill of exceptions on October 20, 2017 in violation of the 48 - hour requirement provided in the Rules of the of the NEC.

Secondly, at the time of hearing the Lester Paye's appeal, the issue of the Board's lack of jurisdiction for the late filing of his bill of exceptions was timely raised and the Board ruled dismissing the appeal. Consequently, we affirmed the ruling of the Board. But in the case before us, the issue of untimely filing of the bill of exceptions was not timely raised. So, the facts and circumstances of the *Lester Paye* case are not analogous to this case.

WHEREFORE and in view of all we have said, we hold that the Board of Commissioners of the NEC, having assumed jurisdiction over the appellant's appeal, heard and ordered a recount, the Board ought to hear the bill of information filed before it alleging that the instruction the Board gave for recount in District #4, Bong County is being wrongly carried out. The Ruling of the Board dismissing the appellant's bill of information is therefor reversed. This case is remanded to the NEC with instruction that the NEC assume jurisdiction over the appellant's bill of information and hears and makes determination thereon. IT IS SO ORDERED.

Counsellors James Kumeh, Jalama Slunteh and George Sargbeh appeared for the appellant.

Counsellor Albert Sims appeared for the 1<sup>st</sup> appellee, Robert Flomo Womba.

Counsellors Joseph N. Bliidi, In – House counsel for the NEC, F. Musah Dean and C. Alexandre B. Zoe appeared for the 2<sup>nd</sup> appellee, NEC.

Ruling reversed.